

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

DWIGHT RODGERS,

Plaintiff,

V.

CRACKER BARREL OLD  
COUNTRY STORE, INC.,

Defendant.

CIVIL ACTION NO.:  
2:06-CV-1067-WKW-SRW

**PLAINTIFF'S RESPONSE TO**  
**JUDGE'S AUGUST 28, 2007 SHOW CAUSE ORDER**

COMES NOW Dwight Rodgers, Plaintiff herein, and files this response to United States District Judge's Show Cause Order and states the following:

## I.BACKGROUND

Plaintiff in the above styled action filed a complaint for employment discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and 42 U.S.C. §§ 1983 and 1988.

On August 28, 2007, the court issued a show cause order directing the Plaintiff to show cause in writing on or before September 10, 2007, why he should not be held in contempt for failure to comply with the order of the court.

Plaintiff was employed in Alabama, however he has returned to Georgia and resided there when he decided to pursue his claims. He retained counsel in Georgia, Attorneys Breedlove & Lassiter, LLP. Attorneys Breedlove & Lassiter, LLP, sought counsel in Alabama to appear pro hac vice.

After having been entered as attorney of record, Attorney Monica York was not aware that she was required to register on CM/ECF, since she was not licensed to practice in Alabama and therefore did not do so. As a member of Pacer, she was able to read and print documents that had been filed but filed no documents, leaving this to local counsel in Alabama. [Exhibit A]. Plaintiff's Georgia counsel was tasked with responding to the Motion for Summary Judgment. Plaintiff's counsel believed based upon the following rules that she had until Monday, August 27, 2007, to mail or electronically file Plaintiff's response to counsel for Defendant.

On August 2, 2007 Defendant filed a Motion for Summary Judgment, giving Plaintiff 21 days to file a response brief. Under Federal Rule 5(b)(2)(B), (C), or (D), whenever a party must act within a prescribed period after service and service is made under the rule, 3 days are added after the period would otherwise expire under subdivision (a). Under Federal Rule 6(a) in computing any period of time prescribed by these rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to runs shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in a court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. Under this rule Plaintiff had until Monday, August 27, 2007 to file their Response to Defendant's Motion for Summary Judgment. Plaintiff unable to file with the court electronically on Monday August 27, 2007 placed on that day Plaintiff's Response to Defendant's Motion for Summary Judgment, in the mail to Defendant's Counsel. [See Attached Cover Letter in addition to Certificates of

Service Attached to Response].<sup>1</sup> Plaintiff's Georgia counsel was attempting to coordinate the electronic filing with Plaintiff's Alabama counsel when they received the show cause order. Plaintiff's counsel in Georgia has since receiving the judge's order by mail, applied for electronic noticing with the Middle District of Alabama. [See Attached Transmission Confirmation].

Plaintiff along with this response to the judge's show cause order has uploaded Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff's Brief in Opposition and Plaintiff's Evidentiary Submission in Support of His Opposition to Defendant's Motion for Summary Judgment. Additionally, Plaintiff prays that this court will accept this response as adequate to excuse his behavior and why he should not be held in contempt for failure to comply with lawful orders of this court.

### **CONCLUSION**

For the foregoing reason Plaintiff submits all attachments to the court praying that an order of contempt not be imposed.

Respectfully submitted this 31 st day of August, 2007.

/s/Byron Perkins  
State Bar No. ASB - 0183 - N75B  
Attorney for Plaintiff

The Cochran Firm  
505 North 20<sup>th</sup> Street - Suite 825  
Birmingham, Alabama 35203  
(205) 244-1115  
(205) 244-1171 fax  
email: **bperkins@CochranFirm.com**

---

<sup>1</sup> Plaintiff also files simulateaneously herewith Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff's Brief in Opposition and Plaintiff's Evidentiary Submission in Support of His Opposition to Defendant's Motion for Summary Judgment.

s/Monica A. York

Monica A. York

State Bar No. 781153

Attorney for Plaintiff

ATTORNEYS

BREEDLOVE & LASSITER, LLP

250 East Ponce de Leon Avenue

Suite 425

Decatur, Georgia 30030

(404) 377-5512 (telephone)

(404) 377-5515 (facsimile)

email: [myork@breedloveandlassiter.com](mailto:myork@breedloveandlassiter.com)

DWIGHT RODGERS )

Plaintiff ) CIVIL ACTION NO. \_\_\_\_\_

Plaintiff ) CIVIL ACTION NO. \_\_\_\_\_

3:06 CV 1067 WKW SPW

V

CRACKER BARREL OLD

COUNTRY STORE, INC. )

Defendant \_\_\_\_\_ )

### CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2007, I electronically filed **PLAINTIFF'S**

Jennifer Bucky

 $\Delta = -1, 1 \text{ --- II, III} \rightarrow \text{the same}$ 

Page 2 of 2 Forman LLP

### 3400 Weckovia Tower

420 North 20th Street

Birmingham, Alabama 35203

Respectfully submitted,

/s/Byron Perkins

Byron Perkins

State Bar No. ASB - 0183 - N75B

Attorney for Plaintiff

The Cochran Firm  
505 North 20<sup>th</sup> Street - Suite 825  
Birmingham, Alabama 35203  
(205) 244-1115  
(205) 244-1171 fax  
email: **bperkins@CochranFirm.com**

s/Monica A. York

Monica A. York

State Bar No. 781153

Attorney for Plaintiff

ATTORNEYS  
BREEDLOVE & LASSITER, LLP  
250 East Ponce de Leon Avenue  
Suite 425  
Decatur, Georgia 30030  
(404) 377-5512 (telephone)  
(404) 377-5515 (facsimile)  
email: **myork@breedloveandlassiter.com**

# EXHIBIT A

2:06-CV-1067-WKW-SRW

CRACKER BARREL OLD

COUNTRY STORE, INC. )

COUNTRY STORE, INC., )  
)

Monica A. York, appeared before me the undersigned officer, duly authorized

I, Monica A. York, am over the age of 18 and I am competent to give this

I have personal knowledge of and am competent to make the following



I drafts a response to Defendant's Motion for Summary Judgment in above-captioned and numbered civil action.

3.

I was under the erroneous understanding that I was unable to register with the Middle District of Alabama CM/ECF and therefore did not do so when I applied to appear pro hac vice in the above captioned and numbered civil action.

4.

Late in the evening when I was ready to file the document I was unable to coordinate with Plaintiff's Alabama counsel to upload the document and since I was unable to I placed the response in the mail.

5.

I calculated the day for filing as Monday August 27, 2007, based upon, 21 days to respond, plus the 3 day mailing rule which had the day fall on Sunday. That meant we had until Monday to file.

6.

Based on this understanding I then emailed to Plaintiff's Alabama Counsel the documents to be uploaded to the court.

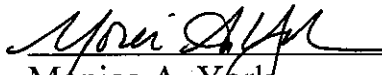
7.

In the process of coordinating filing the documents, Plaintiff's counsel received the Judge's Show Cause Order. Plaintiff's counsel responds to this Order, accordingly and attaches this affidavit as additional evidence to explain the delay.

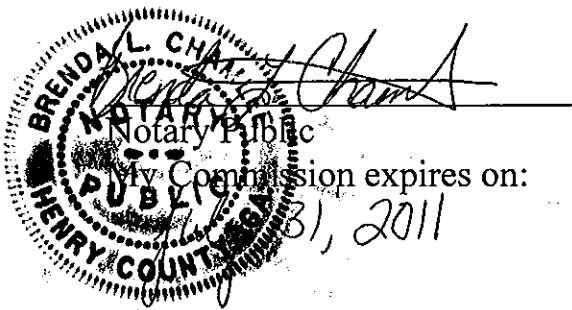
8.

I hereby declare under penalty of perjury that the foregoing Affidavit is true and correct to the best of my personal knowledge.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Monica A. York  
State Bar No. 781153

Sworn to and subscribed before me  
this 31 day of August, 2007.



## Cover Letter/Certificates of Service

ATTORNEYS

**BREEDLOVE & LASSITER, LLP**

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Lee Breedlove  
Jule C. Lassiter, III  
Monica A. York\*  
\*Also admitted in Massachusetts

404.377.5512  
404.377.5515 Fax

August 27, 2007

Ashley Hattaway, Esq.  
Burr & Forman LLP  
3100 Wachovia Tower, 420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Re: **Dwight N. Rodgers v. Cracker Barrel Old Country Store, Inc.**  
United States District Court for the Middle District of Alabama  
Northern Division: Civil Action No.: CV-06-1067-WKW-SRW

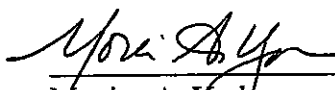
Dear Ms. Hattaway:

Enclosed please find **Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff's Brief in Opposition and Plaintiff's Evidentiary Submission in Support of His Opposition to Defendant's Motion for Summary Judgment**. We have forwarded them to Mr. Perkins to have them uploaded.

If you have any questions, please contact our office. Thank you for your cooperation in this matter.

Sincerely,

ATTORNEYS  
BREEDLOVE & LASSITER, LLP

  
\_\_\_\_\_  
Monica A. York

cc: Byron Perkins

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

DWIGHT RODGERS,

Plaintiff,

V.

CRACKER BARREL OLD  
COUNTRY STORE, INC.,

Defendant.

CIVIL ACTION NO.:  
2:06-CV-1067-WKW-SRW

## CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007, I placed in US mail **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to the following attorneys of record and electronically filed same using the CM/ECF system on August 28, 2007:

Jennifer Busby  
Ashley H. Hattaway  
Burr & Forman LLP  
3400 Wachovia Tower  
420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Respectfully submitted,

/s/Byron Perkins

Byron Perkins  
State Bar No. ASB - 0183 - N75B  
Attorney for Plaintiff

The Cochran Firm  
505 North 20<sup>th</sup> Street - Suite 825  
Birmingham, Alabama 35203  
(205) 244-1115  
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email: [Bperkins@CochranFirm.com](mailto:Bperkins@CochranFirm.com)

s/Monica A. York  
Monica A. York  
State Bar No. 781153  
Attorney for Plaintiff

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

~~DWIGHT RODGERS,~~

Plaintiff,

V.

CRACKER BARREL OLD  
COUNTRY STORE, INC.,

Defendant.

CIVIL ACTION NO.:  
2:06-CV-1067-WKW-SRW

# CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007, I placed in US mail **PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to the following attorneys of record and electronically filed same using the CM/ECF system on August 28, 2007:

Jennifer Busby  
Ashley H. Hattaway  
Burr & Forman LLP  
3400 Wachovia Tower  
420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Respectfully submitted,  
/s/Byron Perkins  
Byron Perkins  
State Bar No. ASB - 0183 - N75B  
Attorney for Plaintiff

The Cochran Firm  
505 North 20<sup>th</sup> Street - Suite 825  
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email: Bperkins@CochranFirm.com

s/Monica A. York  
Monica A. York  
State Bar No. 781153  
Attorney for Plaintiff

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Suite 425  
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myork@breedloveandlassiter.com



# Transmission Confirmation

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
ELECTRONIC CASE FILING REGISTRATION FORM  
TRANSMISSION CONFIRMATION

Today's Date: 08/30/2007

Instructions: Print a hard copy for your records. After verification, unless other arrangements have been made, a user login and password for access to the ECF System will be electronically transmitted to the e-mail address listed on the registration form.

Please Print

First Name: Monica

Middle Initial: A

Last Name: York

Generation:

Bar ID: 781153

State Issued: GA

Admission Status: Admitted pro hac vice in case # 2:06-CV-1067

Attorneys Breedlove & Lassiter, LLP  
250 East Ponce de Leon Avenue  
Suite 425  
Decatur, GA 30030

Primary Email: myork@breedloveandlassiter.com

*I already have an ECF Login that I use at another court, which is york9222.  
If possible, please assign the same login.*

- This CM/ECF system is for use only in cases designated by the United States District Court for the Middle District of Alabama.
- All attorneys who wish to practice in this court must register for Electronic Noticing (E-Service) per General Order 2:04-mc-3164.
- This system may be used by attorneys to file electronic documents.
- A User's login as issued by the court, combined with the password, serves as and constitutes the attorney's signature.
- Attorneys must be members in good standing of the bar of this Court, or permitted by statute or Local Rule to appear without being a member of the bar, to file documents electronically.
- CM/ECF Users agree to abide by the rules and orders of this court and the Civil and/or Criminal Administrative Procedures (available on-line) concerning CM/ECF.

**Registration for CM/ECF - E-Service and E-Filing**

Includes Authorization to Send Orders, Judgments, Pleadings and Other Documents by E-Mail Transmission

In accordance with the provisions of F.R.CIV.P. 5(b)(2)(D), I understand that service, except for original process, will be given to me by electronic means to the e-mail addresses listed above. I agree to waive the provisions of F.R.Civ.P. 77(d) and F.R.Crim.P. 49(c) providing service of notice of the entry of an order or judgment by mail and consent that such notice may be served by electronic means. I am a member of the bar in good standing, or permitted by statute or Local Rule to appear without being a member of the bar. I understand that this electronic notice will be in lieu of notice by mail.

Your on-line registration is complete; you will receive notification as to your user login and password via email. Procedures for using the system will be available at [http://www.almd.uscourts.gov/CMECF/ecf\\_index.htm](http://www.almd.uscourts.gov/CMECF/ecf_index.htm). Contact the ECF Help Desk at (334) 954-3935 if you have questions concerning the registration process.

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

DWIGHT RODGERS,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.:
	)	2:06-CV-1067-WKW-SRW
	)	
v.	)	
	)	
CRACKER BARREL OLD	)	
COUNTRY STORE, INC.,	)	
	)	
Defendant.	)	

**AFFIDAVIT OF ATTORNEY MONICA A. YORK**

Monica A. York, appeared before me the undersigned officer, duly authorized to administer oaths in the State of Georgia and having been duly sworn states the following:

1.

I, Monica A. York, am over the age of 18 and I am competent to give this Affidavit. I understand that it will be used in the above-captioned and numbered civil action.

I have personal knowledge of and am competent to make the following statements:

2.

I drafts a response to Defendant's Motion for Summary Judgment in above-captioned and numbered civil action.

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I was under the erroneous understanding that I was unable to register with the Middle District of Alabama CM/ECF and therefore did not do so when I applied to appear pro hac vice in the above captioned and numbered civil action.

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5.

I calculated the day for filing as Monday August 27, 2007, based upon, 21 days to respond, plus the 3 day mailing rule which had the day fall on Sunday. That meant we had until Monday to file.

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Having failed to upload on Monday, August 27, 2007, after speaking with Plaintiff's Alabama Counsel I emailed to Plaintiff's Alabama Counsel the documents

to be uploaded to the court on Wednesday, August 29, 2007.

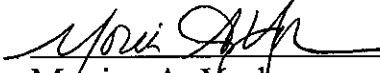
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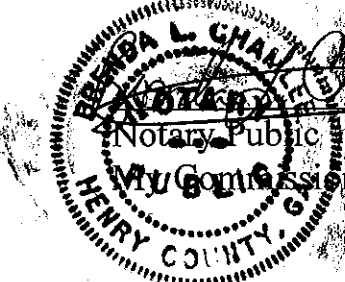
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I hereby declare under penalty of perjury that the foregoing Affidavit is true and correct to the best of my personal knowledge.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Monica A. York  
State Bar No. 781153

Sworn to and subscribed before me  
this 5 - day of September, 2007.

  
My Commission expires on: July 21, 2011